a second domestic corporation shall not be applied to reduce the previously deducted losses of a foreign branch of the second corporation (but may be applied to reduce such losses of the foreign branch of the first corporation) upon the transfer of the two branches to a foreign corporation, even though the two domestic corporations file a consolidated return for the year in which the transfer occurs and the two branches are considered at that time to constitute a single foreign branch. For an example of the application of the principles of this paragraph (g)(3), see Revenue Ruling 81–89, 1981–1 C.B. 129.

(4) *Property not transferred.* A U.S. transferor's failure to transfer any property of a foreign branch shall be irrelevant to the determination of the previously deducted losses of the branch subject to recapture under the rules of this section. Thus, if the activities with respect to untransferred property constituted a part of the branch operation under the rules of this paragraph (g), then the losses generated by those activities shall be subject to recapture, notwithstanding the failure to transfer the property. For an example of the application of the principles of this paragraph (g)(4), see Revenue Ruling 80–247, 1980–2 C.B. 127, relating to property abandoned by the U.S. transferor.

(h) *Anti-abuse rule.* If—

(1) A U.S. person transfers property of a foreign branch to a domestic corporation for a principal purpose of avoiding the effect of this section; and

(2) The domestic corporation thereafter transfers the property of the foreign branch to a foreign corporation,

Then, solely for purposes of this section, that U.S. person shall be treated as having transferred the property of the branch directly to the foreign corporation. A U.S. person shall be presumed to have transferred property of a foreign branch for a principal purpose of avoiding the effect of this section if the property is transferred to the domestic corporation less than two years prior to the domestic corporation's transfer of the property to a foreign corporation. This presumption may be rebutted by clear evidence that the subsequent transfer of the property was not contemplated at the time of the initial transfer to the domestic corporation and that avoidance of the effect of this section was not a principal purpose for the transaction. A transfer may have more than one principal purpose.

(i) *Basis adjustments.* Basis adjustments reflecting gain recognized pursuant to this section shall be made as described in §1.367(a)–1T(b)(4)(ii).

[T.D. 8087, 51 FR 17950, May 16, 1986]

§1.367(a)–8 Gain recognition agreement requirements.

(a) *In general.* This section specifies the general terms and conditions for an agreement to recognize gain entered into pursuant to §1.367(a)–3(b) or (c) to qualify for nonrecognition treatment under section 367(a).

(1) *Filing requirements.* A transferor's agreement to recognize gain (described in paragraph (b) of this section) must be attached to, and filed by the due date (including extensions) of, the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Gain recognition agreement forms.* Any agreement, certification, or other document required to be filed pursuant to the provisions of this section shall be submitted on such forms as may be prescribed therefor by the Commissioner (or similar statements providing the same information that is required on such forms). Until such time as forms are prescribed, all necessary filings may be accomplished by providing the required information to the Internal Revenue Service in accordance with the rules of this section.

(3) *Who must sign.* The agreement to recognize gain must be signed under penalties of perjury by a responsible officer in the case of a corporate transferor, except that if the transferor is a member but not the parent of an affiliated group (within the meaning of section 1504(a)(1)), that files a consolidated Federal income tax return for the taxable year in which the transfer was made, the agreement must be entered into by the parent corporation and signed by a responsible officer of such parent corporation; by the individual, in the case of an individual transferor (including a partner who is treated as a transferor by virtue of

§1.367(a)–1T(c)(3)); by a trustee, executor, or equivalent fiduciary in the case of a transferor that is a trust or estate; and by a debtor in possession or trustee in a bankruptcy case under Title 11, United States Code. An agreement may also be signed by an agent authorized to do so under a general or specific power of attorney.

(b) *Agreement to recognize gain*—(1) *Contents.* The agreement must set forth the following information, with the heading ''GAIN RECOGNITION AGREEMENT UNDER §1.367(a)–8'', and with paragraphs labeled to correspond with the numbers set forth as follows—

(i) A statement that the document submitted constitutes the transferor's agreement to recognize gain in accordance with the requirements of this section;

(ii) A description of the property transferred as described in paragraph (b)(2) of this section;

(iii) The transferor's agreement to recognize gain, as described in paragraph (b)(3) of this section;

(iv) A waiver of the period of limitations as described in paragraph (b)(4) of this section;

(v) An agreement to file with the transferor's tax returns for the 5 full taxable years following the year of the transfer a certification as described in paragraph (b)(5) of this section;

(vi) A statement that arrangements have been made in connection with the transferred property to ensure that the transferor will be informed of any subsequent disposition of any property that would require the recognition of gain under the agreement; and

(vii) A statement as to whether, in the event all or a portion of the gain recognition agreement is triggered under paragraph (e) of this section, the taxpayer elects to include the required amount in the year of the triggering event rather than in the year of the initial transfer. If the taxpayer elects to include the required amount in the year of the triggering event, such statement must be included with all of the other information required under this paragraph (b), and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Description of property transferred*—(i) The agreement shall include a description of each property transferred by the transferor, an estimate of the fair market value of the property as of the date of the transfer, a statement of the cost or other basis of the property and any adjustments thereto, and the date on which the property was acquired by the transferor.

(ii) If the transferred property is stock or securities, the transferor must provide the information contained in paragraphs (b)(2)(ii)(A) through (F) of this section as follows—

(A) The type or class, amount, and characteristics of the stock or securities transferred, as well as the name, address, and place of incorporation of the issuer of the stock or securities, and the percentage (by voting power and value) that the stock (if any) represents of the total stock outstanding of the issuing corporation;

(B) The name, address and place of incorporation of the transferee foreign corporation, and the percentage of stock (by voting power and value) that the U.S. transferor received or will receive in the transaction;

(C) If stock or securities are transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder;

(D) If the property transferred is stock or securities of a domestic corporation, the taxpayer identification number of the domestic corporation whose stock or securities were transferred, together with a statement that all of the requirements of §1.367(a)–3(c)(1) are satisfied;

(E) If the property transferred is stock or securities of a foreign corporation, a statement as to whether the U.S. transferor was a United States shareholder (a U.S. transferor that satisfies the ownership requirements of section 1248(a)(2) or (c)(2)) of the corporation whose stock was exchanged, and, if so, a statement as to whether the U.S. transferor is a United States shareholder with respect to the stock

received, and whether any reporting requirements contained in regulations under section 367(b) are applicable, and, if so, whether they have been satisfied; and

(F) If the transaction involved the transfer of assets other than stock or securities and the transaction was subject to the indirect stock transfer rules of §1.367(a)–3(d), a statement as to whether the reporting requirements under section 6038B have been satisfied with respect to the transfer of property other than stock or securities, and an explanation of whether gain was recognized under section 367(a)(1) and whether section 367(d) was applicable to the transfer of such assets, or whether any tangible assets qualified for nonrecognition treatment under section 367(a)(3) (as limited by section 367(a)(5) and §§1.367(a)–4T, 1.367(a)–5T and 1.367(a)–6T).

(3) *Terms of agreement*—(i) *General rule.* If prior to the close of the fifth full taxable year (i.e., not less than 60 months) following the close of the taxable year of the initial transfer, the transferee foreign corporation disposes of the transferred property in whole or in part (as described in paragraphs (e)(1) and (2) of this section), or is deemed to have disposed of the transferred property (under paragraph (e)(3) of this section), then, unless an election is made in paragraph (b)(1)(vii) of this section, by the 90th day thereafter the U.S. transferor must file an amended return for the year of the transfer and recognize thereon the gain realized but not recognized upon the initial transfer, with interest. If an election under paragraph (b)(1)(vii) of this section was made, then, if a disposition occurs, the U.S. transferor must include the gain realized but not recognized on the initial transfer in income on its Federal income tax return for the period that includes the date of the triggering event. In accordance with paragraph (b)(3)(iii) of this section, interest must be paid on any additional tax due. (If a taxpayer properly makes the election under paragraph (b)(1)(vii) of this section but later fails to include the gain realized in income, the Commissioner may, in his discretion, include the gain in the taxpayer's income in the year of the initial transfer.)

(ii) *Offsets.* No special limitations apply with respect to net operating losses, capital losses, credits against tax, or similar items.

(iii) *Interest.* If additional tax is required to be paid, then interest must be paid on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year of the initial transfer and the date on which the additional tax for that year is paid. If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should enter the amount of interest due, labelled as ''sec. 367 interest'' at the bottom right margin of page 1 of the Federal income tax return for the period that includes the date of the triggering event (page 2 if the taxpayer files a Form 1040), and include the amount of interest in their payment (or reduce the amount of any refund due by the amount of the interest). If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should, as a matter of course, include the amount of gain as taxable income on their Federal income tax returns (together with other income or loss items). The amount of tax relating to the gain should be separately stated at the bottom right margin of page 1 of the Federal income tax return (page 2 if the taxpayer files a Form 1040), labelled as ''sec. 367 tax.''

(iv) *Basis adjustments*—(A) *Transferee.* If a U.S. transferor is required to recognize gain under this section on the disposition by the transferee foreign corporation of the transferred property, then in determining for U.S. income tax purposes any gain or loss recognized by the transferee foreign corporation upon its disposition of such property, the transferee foreign corporation's basis in such property shall be increased (as of the date of the initial transfer) by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount) by the U.S. transferor. In the case of a deemed disposition of the stock of the transferred corporation described in paragraph (e)(3)(i) of this section, the transferee foreign corporation's basis in the transferred stock deemed disposed of shall be increased

by the amount of gain required to be recognized by the U.S. transferor.

(B) *Transferor.* If a U.S. transferor is required to recognize gain under this section, then the U.S. transferor's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(C) *Other adjustments.* Other appropriate adjustments to basis that are consistent with the principles of this paragraph (b)(3)(iv) may be made if the U.S. transferor is required to recognize gain under this section.

(D) *Example.* The principles of this paragraph (b)(3) are illustrated by the following example:

Example—(i) Facts. D, a domestic corporation owning 100 percent of the stock of S, a foreign corporation, transfers all of the S stock to F, a foreign corporation, in an exchange described in section 368(a)(1)(B). The section 1248 amount with respect to the S stock is $0. In the exchange, D receives 20 percent of the voting stock of F. All of the requirements of §1.367(a)–3(c)(1) are satisfied, and D enters into a five-year gain recognition agreement to qualify for nonrecognition treatment and does not make the election contained in paragraph (b)(1)(vii) of this section. One year after the initial transfer, F transfers all of the S stock to F1 in an exchange described in section 351, and D complies with the requirements of paragraph (g)(2) of this section. Two years after the initial transfer, D transfers its entire 20 percent interest in F's voting stock to a domestic partnership in exchange for an interest in the partnership. Three years after the initial exchange, S disposes of substantially all (as described in paragraph (e)(3)(i) of this section) of its assets in a transaction that would be taxable under U.S. income tax principles, and D is required by the terms of the gain recognition agreement to recognize all the gain that it realized on the initial transfer of the stock of S.

(ii) *Result.* As a result of this gain recognition and paragraph (b)(3)(iv) of this section, D is permitted to increase its basis in the partnership interest by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount), the partnership is permitted to increase its basis in the 20 percent voting stock of F, F is permitted to increase its basis in the stock of F1, and F1 is permitted to increase its basis in the stock of S. S, however, is not permitted to increase its basis in its assets for purposes of determining the direct or indirect U.S. tax results, if any, on the sale of its assets.

(4) *Waiver of period of limitation.* The U.S. transferor must file, with the agreement to recognize gain, a waiver of the period of limitation on assessment of tax upon the gain realized on the transfer. The waiver shall be executed on Form 8838 (Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement) and shall extend the period for assessment of such tax to a date not earlier than the eighth full taxable year following the taxable year of the transfer. Such waiver shall also contain such other terms with respect to assessment as may be considered necessary by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(5) *Annual certification*—(i) *In general.* The U.S. transferor must file with its income tax return for each of the five full taxable years following the taxable year of the transfer a certification that the property transferred has not been disposed of by the transferee in a transaction that is considered to be a disposition for purposes of this section, including a disposition described in paragraph (e)(3) of this section. The U.S. transferor must include with its annual certification a statement describing any taxable dispositions of assets by the transferred corporation that are not in the ordinary course of business. The annual certification pursuant to this paragraph (b)(5) must be signed under penalties of perjury by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(ii) *Special rule when U.S. transferor leaves its affiliated group.* If, at the time of the initial transfer, the U.S. transferor was a member of an affiliated group (within the meaning of section 1504(a)(1)) filing a consolidated Federal income tax return but not the parent of such group, the U.S. transferor will file the annual certification (and provide a copy to the parent corporation) if it leaves the group during the term of the gain recognition agreement, notwithstanding the fact that the parent

entered into the gain recognition agreement, extended the statute of limitations pursuant to this section, and remains liable (with other corporations that were members of the group at the time of the initial transfer) under the gain recognition agreement in the case of a triggering event.

(c) *Failure to comply*—(1) *General rule.* If a person that is required to file an agreement under paragraph (b) of this section fails to file the agreement in a timely manner, or if a person that has entered into an agreement under paragraph (b) of this section fails at any time to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, then the initial transfer of property is described in section 367(a)(1) (unless otherwise excepted under the rules of this section) and will be treated as a taxable exchange in the year of the initial transfer (or in the year of the failure to comply if the agreement was filed with a timely-filed (including extensions) original (not amended) return and an election under paragraph (b)(1)(vii) of this section was made). Such a material failure to comply shall extend the period for assessment of tax until three years after the date on which the Internal Revenue Service receives actual notice of the failure to comply.

(2) *Reasonable cause exception.* If a person that is permitted under §1.367(a)–3(b) or (c) to enter into an agreement (described in paragraph (b) of this section) fails to file the agreement in a timely manner, as provided in paragraph (a)(1) of this section, or fails to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, the provisions of paragraph (c)(1) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect and if the person files the agreement or reaches compliance as soon as he becomes aware of the failure. Whether a failure to file in a timely manner, or materially comply, was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(d) *Use of security.* The U.S. transferor may be required to furnish a bond or other security that satisfies the requirements of §301.7101–1 of this chapter if the district director determines that such security is necessary to ensure the payment of any tax on the gain realized but not recognized upon the initial transfer. Such bond or security will generally be required only if the stock or securities transferred are a principal asset of the transferor and the director has reason to believe that a disposition of the stock or securities may be contemplated.

(e) *Disposition (in whole or in part) of stock of transferred corporation*—(1) *In general*—(i) *Definition of disposition.* For purposes of this section, a disposition of the stock of the transferred corporation that triggers gain under the gain recognition agreement includes any taxable sale or any disposition treated as an exchange under this subtitle, (e.g., under sections 301(c)(3)(A), 302(a), 311, 336, 351(b) or section 356(a)(1)), as well as any deemed disposition described under paragraph (e)(3) of this section. It does not include a disposition that is not treated as an exchange, (e.g., under section 302(d) or 356(a)(2)). A disposition of all or a portion of the stock of the transferred corporation by installment sale is treated as a disposition of such stock in the year of the installment sale. A disposition of the stock of the transferred corporation does not include certain transfers treated as nonrecognition transfers (under paragraph (g) of this section) in which the gain recognition agreement is retained but modified, or certain transfers (under paragraph (h) of this section) in which the gain recognition agreement is terminated and has no further effect.

(ii) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. Interaction between trigger of gain recognition agreement and subpart F rules—(i) *Facts.* A U.S. corporation (USP) owns all of the stock of two foreign corporations, CFC1 and CFC2. USP's section 1248 amount with respect to CFC2 is $30. USP has a basis of $50 in its stock of CFC2; CFC2 has a value of $100. In a transaction described in section 351 and 368(a)(1)(B), USP transfers the stock of CFC2 in exchange for additional stock of CFC1. The transaction is subject to

both sections 367 (a) and (b). See §§1.367(a)–3(b) and 1.367(b)–1(a). To qualify for nonrecognition treatment under section 367(a), USP enters into a 5-year gain recognition agreement for $50 under this section. No election under paragraph 8(b)(1)(vii) of this section is made. USP also complies with the notice requirement under §1.367(b)–1(c).

(ii) *Trigger of gain recognition agreement with no election.* Assume that in year 2, CFC1 sells the stock of CFC2 for $120, and that there were no distributions by CFC2 prior to the sale. USP must amend its return for the year of the initial transfer and include $50 in income (with interest), $30 of which will be recharacterized as a dividend pursuant to section 1248. As a result, CFC1 has a basis of $100 in CFC2. As a result of the sale of CFC2 stock by CFC1, USP will have $20 of subpart F foreign personal holding company income. See section 951, et. seq., and the regulations thereunder.

(iii) *Trigger of gain recognition agreement with election.* Assume the same facts as in paragraphs (i) and (ii) of this *Example*, except that when USP attached the gain recognition agreement to its timely filed Federal income tax return for the year of the initial transfer, it elected under paragraph (b)(1)(vii) of this section to include the amount of gain realized but not recognized on the initial transfer, $50, in the year of the triggering event rather than in the year of the initial transfer. In such case, the result is the same as in paragraph (e)(1)(ii)(B) of this section, except that USP will include the $50 of gain on its year 2 return, together with interest. For purposes of determining the dividend component, if any, of the $50 inclusion, USP will take into account the section 1248 amount of CFC2 at the time of the disposition in Year 2.

(2) *Partial disposition.* If the transferee foreign corporation disposes of (or is deemed to dispose of) only a portion of the transferred stock or securities, then the U.S. transferor is required to recognize only a proportionate amount of the gain realized but not recognized upon the initial transfer of the transferred property. The proportion required to be recognized shall be determined by reference to the relative fair market values of the transferred stock or securities disposed of and retained. Solely for purposes of determining whether the U.S. transferor must recognize income under the agreement described in paragraph (b) of this section, in the case of transferred property (including stock or securities) that is fungible with other property owned by the transferee foreign corporation, a disposition by such corporation of any such property shall be deemed to be a disposition of no less than a ratable portion of the transferred property.

(3) *Deemed dispositions of stock of transferred corporation*—(i) *Disposition by transferred corporation of substantially all of its assets*—(A) *In general.* Unless an exception applies (as described in paragraph (e)(3)(i)(B) of this section), a transferee foreign corporation will be treated as having disposed of the stock or securities of the transferred corporation if, within the term of the gain recognition agreement, the transferred corporation makes a disposition of substantially all (within the meaning of section 368(a)(1)(C)) of its assets (including stock in a subsidiary corporation or an interest in a partnership). If the initial transfer that necessitated the gain recognition agreement was an indirect stock transfer, see §1.367(a)–3(d)(2)(v). If the transferred corporation is a U.S. corporation, see paragraph (h)(2) of this section.

(B) The transferee foreign corporation will not be deemed to have disposed of the stock of the transferred corporation if the transferred corporation is liquidated into the transferee foreign corporation under sections 337 and 332, provided that the transferee foreign corporation does not dispose of substantially all of the assets formerly held by the transferred corporation (and considered for purposes of the substantially all determination) within the remaining period during which the gain recognition agreement is in effect. A nonrecognition transfer is not counted for purposes of the substantially all determination as a disposition if the transfer satisfies the requirements of paragraph (g)(3) of this section. A disposition does not include a compulsory transfer as described in §1.367(a)–4T(f) that was not reasonably forseeable by the U.S. transferor at the time of the initial transfer.

(ii) *U.S. transferor becomes a non-citizen nonresident.* If a U.S. transferor loses U.S. citizenship or a long-term resident ceases to be taxed as a lawful permanent resident (as defined in section 877(e)(2)), then immediately prior to the date that the U.S. transferor loses U.S. citizenship or ceases to be taxed as a long-term resident, the gain

recognition agreement will be triggered as if the transferee foreign corporation disposed of all of the stock of the transferred corporation in a taxable transaction on such date. No additional inclusion is required under section 877, and a gain recognition agreement under section 877 may not be used to avoid taxation under section 367(a) resulting from the trigger of the section 367(a) gain recognition agreement.

(f) *Effect on gain recognition agreement if U.S. transferor goes out of existence*—(1) *In general.* If an individual transferor that has entered into an agreement under under paragraph (b) of this section dies, or if a U.S. trust or estate that has entered into an agreement under paragraph (b) of this section goes out of existence and is not required to recognize gain as a consequence thereof with respect to all of the stock of the transferee foreign corporation received in the initial transfer and not previously disposed of, then the gain recognition agreement will be triggered unless one of the following requirements is met—

(i) The person winding up the affairs of the transferor retains, for the duration of the waiver of the statute of limitations relating to the gain recognition agreement, assets to meet any possible liability of the transferor under the duration of the agreement;

(ii) The person winding up the affairs of the transferor provides security as provided under paragraph (d) of this section for any possible liability of the transferor under the agreement; or

(iii) The transferor obtains a ruling from the Internal Revenue Service providing for successors to the transferor under the gain recognition agreement.

(2) *Special rule when U.S. transferor is a corporation*—(i) *U.S. transferor goes out of existence pursuant to the transaction.* If the transferor is a U.S. corporation that goes out of existence in a transaction in which the transferor's gain would have qualified for nonrecognition treatment under §1.367(a)–3(b) or (c) had the U.S. transferor remained in existence and entered into a gain recognition agreement, then the gain may generally qualify for nonrecognition treatment only if the U.S. transferor is owned by a single U.S. parent corporation and the U.S. transferor and its parent corporation file a consolidated Federal income tax return for the taxable year that includes the transfer, and the parent of the consolidated group enters into the gain recognition agreement. However, notwithstanding the preceding sentence, a U.S. transferor that was controlled (within the meaning of section 368(c)) by five or fewer domestic corporations may request a ruling that, if certain conditions prescribed by the Internal Revenue Service are satisfied, the transaction may qualify for nonrecognition treatment.

(ii) *U.S. corporate transferor is liquidated after gain recognition agreement is filed.* If a U.S. transferor files a gain recognition agreement but is liquidated during the term of the gain recognition agreement, such agreement will be terminated if the liquidation does not qualify as a tax-free liquidation under sections 337 and 332 and the U.S. transferor includes in income any gain from the liquidation. If the liquidation qualifies for nonrecognition treatment under sections 337 and 332, the gain recognition agreement will be triggered unless the U.S. parent corporation and the U.S. transferor file a consolidated Federal income tax return for the taxable year that includes the dates of the initial transfer and the liquidation of the U.S. transferor, and the U.S. parent enters into a new gain recognition agreement and complies with reporting requirements similar to those contained in paragraph (g)(2) of this section.

(g) *Effect on gain recognition agreement of certain nonrecognition transactions*—(1) *Certain nonrecognition transfers of stock or securities of the transferee foreign corporation by the U.S. transferor.* If the U.S. transferor disposes of any stock of the transferee foreign corporation in a nonrecognition transfer and the U.S. transferor complies with reporting requirements similar to those contained in paragraph (g)(2) of this section, the U.S. transferor shall continue to be subject to the terms of the gain recognition agreement in its entirety.

(2) *Certain nonrecognition transfers of stock or securities of the transferred corporation by the transferee foreign corporation.* (i) If, during the period the gain recognition agreement is in effect,

the transferee foreign corporation disposes of all or a portion of the stock of the transferred corporation in a transaction in which gain or loss would not be required to be recognized by the transferee foreign corporation under U.S. income tax principles, such disposition will not be treated as a disposition within the meaning of paragraph (e) of this section if the transferee foreign corporation receives (or is deemed to receive), in exchange for the property disposed of, stock in a corporation, or an interest in a partnership, that acquired the transferred property (or receives stock in a corporation that controls the corporation acquiring the transferred property); and the U.S. transferor complies with the requirements of paragraphs (g)(2)(ii) through (iv) of this section.

(ii) The U.S. transferor must provide a notice of the transfer with its next annual certification under paragraph (b)(5) of this section, setting forth—

(A) A description of the transfer;

(B) The applicable nonrecognition provision; and

(C) The name, address, and taxpayer identification number (if any) of the new transferee of the transferred property.

(iii) The U.S. transferor must provide with its next annual certification a new agreement to recognize gain (in accordance with the rules of paragraph (b) of this section) if, prior to the close of the fifth full taxable year following the taxable year of the initial transfer, either—

(A) The initial transferee foreign corporation disposes of the interest (if any) which it received in exchange for the transferred property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(B) The corporation or partnership that acquired the property disposes of such property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(C) There is any other disposition that has the effect of an indirect disposition of the transferred property.

(iv) If the U.S. transferor is required to enter into a new gain recognition agreement, as provided in paragraph (g)(2)(iii) of this section, the U.S. transferor must provide with its next annual certification (described in paragraph (b)(5) of this section) a statement that arrangements have been made, in connection with the nonrecognition transfer, ensuring that the U.S. transferor will be informed of any subsequent disposition of property with respect to which recognition of gain would be required under the agreement.

(3) *Certain nonrecognition transfers of assets by the transferred corporation.* A disposition by the transferred corporation of all or a portion of its assets in a transaction in which gain or loss would not be required to be recognized by the transferred corporation under U.S. income tax principles, will not be treated as a disposition within the meaning of paragraph (e)(3) of this section if the transferred corporation receives in exchange stock or securities in a corporation or an interest in a partnership that acquired the assets of the transferred corporation (or receives stock in a corporation that controls the corporation acquiring the assets). If the transaction would be treated as a disposition of substantially all of the transferred corporation's assets, the preceding sentence shall only apply if the U.S. transferor complies with reporting requirements comparable to those of paragraphs (g)(2)(ii) through (iv) of this section, providing for notice, an agreement to recognize gain in the case of a direct or indirect disposition of the assets previously held by the transferred corporation, and an assurance that necessary information will be provided to appropriate parties.

(h) *Transactions that terminate the gain recognition agreement*—(1) *Taxable disposition of stock or securities of transferee foreign corporation by U.S. transferor.* (i) If the U.S. transferor disposes of all of the stock of the transferee foreign corporation that it received in the initial transfer in a transaction in which all realized gain (if any) is recognized currently, then the gain recognition agreement shall terminate and have no further effect. If the transferor disposes of a portion of the stock of the transferee foreign corporation that it received in the initial transfer in a taxable transaction, then in the event that the gain recognition agreement is later triggered, the transferor shall be

required to recognize only a proportionate amount of the gain subject to the gain recognition agreement that would otherwise be required to be recognized on a subsequent disposition of the transferred property under the rules of paragraph (b)(2) of this section. The proportion required to be recognized shall be determined by reference to the percentage of stock (by value) of the transferee foreign corporation received in the initial transfer that is retained by the United States transferor.

(ii) The rule of this paragraph (h) is illustrated by the following example:

Example. A, a United States citizen, owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X (and other assets) for 100 percent of the outstanding voting and nonvoting stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, A disposes of 60 percent of the fair market value of the stock of Y, thus terminating 60 percent of the gain recognition agreement. One year thereafter, Y disposes of 50 percent of the fair market value of the stock of X. A is required to include in his income in the year of the later disposition 20 percent (40 percent interest in Y multiplied by a 50 percent disposition of X) of the gain that A realized but did not recognize on his initial transfer of X stock to Y.

(2) *Certain dispositions by a domestic transferred corporation of substantially all of its assets.* If the transferred corporation is a domestic corporation and the U.S. transferor and the transferred corporation filed a consolidated Federal income tax return at the time of the transfer, the gain recognition agreement shall terminate and cease to have effect if, during the term of such agreement, the transferred corporation disposes of substantially all of its assets in a transaction in which all realized gain is recognized currently. If an indirect stock transfer necessitated the filing of the gain recognition agreement, such agreement shall terminate if, immediately prior to the indirect transfer, the U.S. transferor and the acquired corporation filed a consolidated return (or, in the case of a section 368(a)(1)(A) and (a)(2)(E) reorganization described in §1.367(a)–3(d)(1)(ii), the U.S. transferor and the acquiring corporation filed a consolidated return) and the transferred corporation disposes of substantially all of its assets (taking into account §1.367(a)–3(d)(2)(v)) in a transaction in which all realized gain is recognized currently.

(3) *Distribution by transferee foreign corporation of stock of transferred corporation that qualifies under section 355 or section 337.* If, during the term of the gain recognition agreement, the transferee foreign corporation distributes to the U.S. transferor, in a transaction that qualifies under section 355, or in a liquidating distribution that qualifies under sections 332 and 337, the stock that initially necessitated the filing of the gain recognition agreement (and any additional stock received after the initial transfer), the gain recognition agreement shall terminate and have no further effect, provided that immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

(i) *Effective date.* The rules of this section shall apply to transfers that occur on or after July 20, 1998. For matters covered in this section for periods before July 20, 1998, the corresponding rules of §1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87–85 ((1987–2 C.B. 395); see §601.601(d)(2)(ii) of this chapter) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers prior to July 20, 1998, then the rules of §1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) shall continue to apply in lieu of this section in the event of any direct or indirect nonrecognition transfer of the same property. See, also, §1.367(a)–3(f).

[T.D. 8770, 63 FR 33562, June 19, 1998]

§1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§1.367(b)–1 through 1.367(b)–6 and 1.367(b)–12.

§1.367(b)–1 Other transfers.